but when they reached the chemist on 21 March 1983 the packages were found to contain 299 rolls and 3,997 rolls of cannabis respectively. With the four missing rolls received by the chemist, it was argued that possibly different exhibits were sent to him. It was also submitted that the evidence shows the shoddy manner the exhibits were kept in the customs strong-room. They were not labelled until two days later and it took another two days before they were packed and sealed on 21 March. For these reasons it was argued that the exhibits recovered were not necessarily the same drugs that were sent to the chemist.

We feel that the point was correctly taken by the appellant. In a serious case, such as this, it is pertinent to emphasize again that investigation officers should not treat the custody of exhibits lightly so as to leave a gap in the chain of evidence relating to the exhibits before their production to the court.

In the present case, it is noted, as shown in evidence, that the relevant exhibits, exhs P3 and P6, were kept in a common strong-room with other exhibits relating to other cases. They were not labelled nor marked. No register was kept of what other exhibits were kept in the room together with the present exhibits. The possibility of sending different exhibits to the chemist for analysis was highly probable in a situation such as this. This is more so when there is a discrepancy discovered in the amount of the drug, as the exhibits in this case, received by the chemist was less than the amount allegedly sent to him for analysis.

It is observed in the present case that the customs officer, PK738, who counted the exhibits in the presence of the appellant, was not called to give evidence but instead the prosecution made him available to the defence. But when the prosecution evidence falls short of a prima facie case at the end of the case for the prosecution, such an action is of no avail to close the gap arising in the prosecution's case (see *Abdullah Zawawi* v *PP*[1]).

It is also observed that the law is clear that it is unnecessary to call every witness to ensure that there is no break in the chain of evidence (see *Su Ah Ping* v *PP*[2]). But when there is doubt as to the identity of the exhibits, as in this case, failure to adduce evidence to provide the necessary link in the chain of evidence would be fatal to the prosecution's case (*Teoh Hoe Chye* v *PP*[3]). In the present case we find that there is such a failure and as such the conviction under s 39B(1)(a) cannot stand. We set aside the conviction and sentence. To that extent the appeal is allowed.

Nevertheless the evidence shows that the appellant had admitted unreservedly that he bought the cannabis found with him in the yellow plastic bag from one Nasaruddin. He said he paid for 300 sticks but was given only 299 of them. They were mainly, he said, for his own consumption. The contents of this yellow plastic bag was examined and analysed by the chemist and he ascertained that they were cannabis weighing 127.41 gm.

Cannabis is defined as a dangerous drug under s 2 and the First Schedule of the Dangerous Drugs Act 1952. Possession of this drug of less than 200 gm in weight (presumed weight for trafficking) without authorization under s 7 is contrary to and punishable under s 6 of the Act.

In our view, on those facts, the appellant had committed an offence contrary to s 6 and in that event his conviction is substituted to one under s 6 of the Act. Punishment prescribed under s 6 of the Act is $10,000 fine or imprisonment not exceeding five years or both. Because of the seriousness of the nature of the offence of possession of drugs in the country, we feel that a custodial sentence is imperative in public interest.

Cognizant of that situation the sentence meted out on the appellant is now substituted to one of five years' imprisonment. This sentence is to run from the date of his conviction in the court below, 30 July 1986.

Appeal allowed. Conviction and sentence substituted accordingly.

Appeal allowed.

Solicitors: *Shafee & Co.*

Reported by *Prof Ahmad Ibrahim*

Public Bank Bhd v Malamaju Enterprise Sdn Bhd & Ors

HIGH COURT (IPOH) – CIVIL SUIT NO 1504 OF 1985
ABDUL MALEK J
11 FEBRUARY 1989

Civil Procedure – Service of writ of summons – Application to set aside – Substituted service of writ of summons effected on premises after defendant has moved out – Change of address card issued by Registration Department produced – Subsequent judgment in default of appearance obtained – Irregular judgment due to non-service of writ

Civil Procedure – Final judgment given by senior assistant registrar – Appeal against – Whether triable issues on the merits raised – Sixteen-month delay on plaintiffs' part in filing application for final judgment – No explanation given – Whether final judgment should be set aside

In this case the fifth defendant had applied to set aside the service of the writ of summons and the judgment in default of appearance entered against her by the plaintiffs. At the same hearing, the fourth and sixth defendants had also filed a notice

of appeal against the senior assistant registrar's decision ordering final judgment against them for the outstanding balance of the overdraft account of the first defendant company owed to the plaintiffs as at 30 September 1987. The grounds for the fifth defendant's application were that she never had notice of the writ of summons as she had moved out of the premises on which substituted service had been effected on 21 February 1987. The fifth defendant also stated that she had resigned as director of the first defendant company on 20 September 1983 and as such had been absolved from the guarantee pursuant to the first defendant's circular dated 23 September 1983. As regards the fourth and sixth defendants, they stated the same grounds as the fifth defendant, ie that they had ceased to be directors and as such had been discharged from the letter of guarantee.

Held, allowing the fifth defendant's application and the fourth defendant's appeal but dismissing the sixth defendant's appeal:

(1) Since the substituted service on the fifth defendant was effected on 21 February 1987 and in the light of the evidence that she had moved on 23 July 1985, the court agrees with her counsel that judgment in default of appearance entered against her was irregular.

(2) In view of the plaintiffs' submission that since the fifth defendant had signed the letter of guarantee in her personal capacity and that her ceasing to be a director of the first defendant did not terminate her liability, a triable issue had been raised.

(3) With regard to the fourth and sixth defendants' appeal, there had been no explanation from the plaintiffs as to the 16-month delay in filing their application for final judgment against the fourth and sixth defendants on 6 November 1987 when they had in fact filed their joint statement of defence on 28 July 1986. On the unexplained delay alone, the court had the power to set aside the order for final judgment against them if it thought fit.

(4) However, the fourth defendant had raised triable issues on the merits when he stated that he had ceased to be a director and had thus been discharged from the letter of guarantee. His appeal is therefore allowed with costs.

(5) The sixth defendant had not raised any triable issues as his name does not appear in that particular company resolution. His appeal is therefore dismissed with costs.

[*Editorial Note*: The plaintiffs have appealed to the Supreme Court vide Civil Appeal No 03-23 of 1989.]

Ng Poh Tat for the plaintiffs.
Asbir Kaur Sangha (Mrs) for the fourth, fifth and sixth defendants.

Cur Adv Vult

Abdul Malek J: The fifth defendant had applied by summons-in-chambers (encl 25) filed on 27 August 1987 to set aside with costs the service of the writ of summons and the judgment in default of appearance entered against her in this suit on 30 March 1987. At the same hearing, the fourth and sixth defendants had filed a notice of appeal (encl 35) against the decision of the learned senior assistant registrar on 8 June 1988 ordering final judgment against them for $276,224.03 being the outstanding balance of the overdraft account of the first defendant as at 30 September 1987 together with interest at 16.75% pa with monthly rests on the overdraft within the operative limit of $150,000 and at 17.25% pa with monthly rests on the excess overdraft, which is subject to fluctuations at the plaintiffs' discretion, from 1 October 1987 to the date of satisfaction and for $158,801.31 being the outstanding balance of the trust receipt of the first defendant as at 30 September 1987 together with interest thereon at 17% pa, which is subject to fluctuations at the plaintiffs' discretion, from 1 October 1987 to the date of satisfaction, and costs.

The grounds for the fifth defendant's application were that she had never had notice of the writ of summons as she had moved out of the premises on which substituted service had been effected on 21 February 1987, and to support this ground she had produced a copy of the change of address card dated 23 July 1985 issued by the registration department; that the endorsement by the process server on the affidavit of service (encl 20) was incorrect as he appeared to be at two different places at the same time, that exh PBB2 at encl 9 in mid-April 1986 had addressed the fifth defendant as a man and not as a woman which she is and in any case it was marked 'unknown' by the postal department; and that exh PBB5 at the same enclosure was an affidavit of non-service affirmed on 5 May 1986. On these facts, learned counsel for the fifth defendant argued that the judgment was irregular.

Counsel then referred to the proposed statement of defence by the fifth defendant at exh HSK1 at encl 24 wherein it had been stated that she had resigned as director on 20 September 1983 and that she and the fourth and sixth defendants had been absolved from their guarantee from that date pursuant to the first defendant's circular resolution dated 23 September 1983, a copy of which had been sent to and agreed to by the plaintiffs as at exh CKL2 at encl 28. As such, counsel contended that cl 6 of the guarantee at exh CKL1 of that enclosure was sufficient notice to the plaintiffs. Furthermore, counsel submitted that the fifth defendant did not speak English.

Since the substituted service on the fifth defendant was effected on 21 February 1987 in the light of the evidence that she had moved on 23 July 1985, the court agrees with her counsel that judgment in default of appearance entered against her was irregular. On the merits, the fifth defendant had referred to the first defendant's company resolution stating that she and the fourth defendant had resigned as directors of the company with effect from 20 September 1983 and that they were free from all liabilities, disputes and any encumbrances whatsoever as they had no further connections in any of the company's activities from that date.

On this point, counsel for the plaintiffs argued that the fifth defendant had never been discharged by the plaintiffs as no formal discharge had been executed by them to that effect. He, however, agreed that this requirement was not stated in the letter of guarantee. In any case, he submitted that since the fifth defendant had signed the letter of guarantee in her personal capacity, her ceasing to be a director of the first defendant did not terminate her liability. I was of the view that this constituted a triable issue in the circumstances and had the effect of strengthening the fifth defendant's application to set aside the judgment in default of appearance. Assuming I was in error, the irregular service on her alone was sufficient to set aside the judgment in default of appearance with costs.

Concerning the appeal by the fourth and sixth defendants, the plaintiffs had applied for final judgment against the second, fourth and sixth defendants by way of summons-in-chambers filed on 6 November 1987. The fourth and sixth defendants had in fact filed their joint statement of defence on 28 July 1986 and there had been no explanation from the plaintiffs as to the 16-month delay in filing their application except for para 11 in encl 33 where the plaintiffs averred on the time taken for foreclosure proceedings. On the unexplained delay alone, the court had the power to set aside the order for final judgment if it thought it fit.

The fourth and sixth defendants, in addition, stated the same grounds as the fifth defendant as to the fact that they had ceased to be directors and had been discharged from the letter of guarantee. As for the fourth defendant, the court held that as in the case of the fifth defendant, he had raised triable issues on the merits apart from the fact that the delay in the application for the summary judgment had not been explained satisfactorily. I accordingly allowed his appeal with costs. However, the same could not be said for the sixth defendant as his name does not appear in that particular company resolution and despite the fact that the application for summary judgment was filed 16 months after his statement of defence, the court was of the view that he had not raised any triable issues and in the event dismissed his appeal with costs.

Order accordingly.

Solicitors: *Henry Lim & Co*; *Asbir, Hira Singh & Co.*

Reported by *Ng Sheau Jiuan*

National Union of Teachers in Independent Schools, West Malaysia v Han Chiang High School, Penang

HIGH COURT (KUALA LUMPUR) – CIVIL APPEAL NO R8-16-18-88
EUSOFF CHIN J
27 JANUARY 1989

Civil Procedure – Reference of questions to High Court after Industrial Court handed down award – Whether High Court is limited to determine only questions referred to it – Whether Industrial Court is bound to refer any question of law to High Court – Industrial Relations Act 1967, s 33A(1) & (5)

Administrative Law – Dispute over collective agreement between appellant union and respondent school – Industrial Court finding that union had no locus standi before court as no teacher of school belonged to union – Collateral dispute over alleged wrongful dismissal of teachers by respondent school pending adjudication before another division of Industrial Court – Whether Industrial Court erred in law and in fact in coming to conclusion that teachers' services had been lawfully terminated and thus no teacher belonged to union – Whether Industrial Court exceeded jurisdiction

The respondent school and the appellant union were locked in two disputes; one was a dispute over a collective agreement on wages and terms and conditions of employment for the teachers employed by the respondent school, and the other was a dispute over the alleged wrongful dismissal of 35 teachers by the respondent school. The dispute over the collective agreement was referred to the Industrial Court on 12 January 1987 for adjudication and the dispute over alleged wrongful dismissal of 35 teachers was referred to another division of the Industrial Court on 14 August 1987. At the hearing of the first dispute in the Industrial Court on 27 July 1987, the respondent school raised a preliminary issue that the appellant union had no locus standi to represent the teachers, arguing that none of the teachers in the school was a member of the union. This was because out of 53 teachers who were members of the union, 18 had resigned from the union on various dates and 35 had their services terminated by way of non-renewal of their contracts. The Industrial Court made a finding that there was not a teacher employed by the school who was a union member and as such, the union could not represent and act in a dispute on behalf of the school teachers who were not its members or were no longer its members. The court thus decided that the appellant union had no locus standi before the court. The appellant union thereafter applied under s 33A(1) of the Industrial Relations Act 1967 for questions of law to be referred to the High Court.

At the hearing before the High Court, there were some arguments as to the jurisdiction and powers of the High Court when hearing an appeal under s 33A of the Industrial Relations Act, viz whether the High Court is limited to determine only questions referred to it.

Held, allowing the appeal:

(1) On the application of any party to the proceedings in which the award is made, the Industrial Court is not bound to refer any question of law to the High Court under s 33A(1) of the Industrial Relations Act 1967, unless the Industrial Court is satisfied that the question is one which fulfils all the conditions provided in that section. In exercising its power to refer or not to refer a question to the High Court, the Industrial Court will have to do so judiciously. But once a question is referred to the